

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chairperson of the Construction Codes Coordinating Board (Chairperson), pursuant to the authority set forth in section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2008 Repl.)) and Mayor's Order 2009-22, dated February 25, 2009, and the Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to the authority set forth in section 12 of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.11 (2011 Supp.)) as amended (Green Building Act), Mayor's Order 2007-206, dated September 21, 2007, and Mayor's Order 2010-1, dated January 1, 2010, hereby give notice of the adoption of the following emergency rulemaking amending subtitle A (Building Code Supplement) of title 12 (D.C. Construction Codes Supplement of 2008) of the District of Columbia Municipal Regulations.

This emergency rulemaking is necessitated by the immediate need to implement provisions of the Green Building Act dealing with applicability of the law to construction projects, the process for submitting a financial security for certain projects, drawdowns of the financial security, and verification of compliance with the Green Building Act.

This emergency rulemaking was adopted on November 14, 2012, to become effective immediately. This emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of effectiveness. The rules will expire on March 14, 2013.

The Chairperson and Director also hereby give notice of the intent to take final rulemaking action to adopt this amendment. Pursuant to section 10(a) of the Act and section 12(a) of the Green Building Act, the proposed amendment will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* or Council approval of the amendment.

Subtitle A (Building Code Supplement) of title 12 (D.C. Construction Codes Supplement of 2008) of the District of Columbia Municipal Regulations is amended as follows:

Chapter 2A (Definitions) is amended as follows:

Insert the following new definitions in Section 202A of the Building Code to read as follows:

PROJECT. The construction of a single or multiple buildings that are part of one development scheme, built at one time or in phases.

DISTRICT FINANCED. (1) Financing of a project or contract where funds or resources to be used for construction and development costs, excluding ongoing operational costs, are received from the District, or funds or resources which, in accordance with a federal grant or otherwise,

the District administers, including a contract, grant, loan, tax abatement or exemption, land transfer, land disposition and development agreement, or tax increment financing, or any combination thereof, provided, that federal funds may be applied to the financing percentage only if permitted by federal law and grant conditions; or (2) Financing whose stated purpose is, in whole or in part, to provide for the new construction or substantial rehabilitation of affordable housing.

DISTRICT INSTRUMENTALITY FINANCED. See *District financed*.

FLOOR AREA, GROSS (For Chapter 13A). The definition of *gross floor area* set forth in DCMR Title 11 (Zoning Regulations), Section 199 (Definitions), and as interpreted by the Zoning Administrator, is incorporated by this reference.

GROSS FLOOR AREA. See *Floor area, gross*.

Chapter 13A (Green Building Promotion) is amended to read as follows:

CHAPTER 13A GREEN BUILDING ACT REQUIREMENTS

Strike Chapter 13A of the International Building Code (2006) in its entirety and insert new Chapter 13A in the Building Code in its place to read as follows:

1301A General

1301A GENERAL

1301.1 Green Building Act of 2006 requirements. An applicant for permits subject to Section 1301.1.1 or Section 1301.1.2 shall comply with Sections 1301.1.3 through 1301.1.11 and the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code §§ 6-1451.01 *et seq.* (2012 Supp.)), as amended (“Green Building Act” or “GBA”). Other components of the Green Building Act are administered by other District of Columbia agencies. The applicant shall have the option of requesting a Green Building Act Preliminary Design Review Meeting (“GBA PDRM”) with the Department, at the discretion of the applicant.

1301.1.1 Publicly-owned or publicly financed projects. This section shall apply to each *project* that is new construction or where the scope of work at the *project* is equivalent to Level 3 *alterations* as defined in the *Existing Building Code*; and is either:

1. A District-owned or District instrumentality-owned *project*; or
2. A *District financed* or *District instrumentality financed project*, where the financing represents at least 15 percent of the *project’s* total cost.

1301.1.1.1 Energy Star Target Finder Tool. Each *project* of 10,000 square feet (929 m²) or more of *gross floor area* shall be designed and constructed to achieve a minimum score of 75 points on the Energy Star Target Finder Tool. The

applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

Exceptions:

1. Building occupancies for which the Energy Star tool is not available.
2. Alterations.

1301.1.1.2 Non-residential projects. A *project* which does not contain Residential Group R occupancies that equal or exceed 50 percent of the gross floor area of the *project*, including allocable area of common space, shall be deemed a non-residential *project* and shall be designed and constructed so as to achieve no less than the applicable LEED standard listed in Section 1301.1.3, at the Silver level or higher. The applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

Exceptions:

1. Educational Group E (covered by Section 1301.1.1.3).
2. Space designed and occupied for Residential Group R occupancies in a non-residential *project* (covered by Section 1301.1.1.4),
3. Space designed and occupied for non-residential uses located in a Residential Group R occupancy *project* (covered by Section 1301.1.1.5).
4. Space designed and occupied for non-residential uses located in a District-owned or a District instrumentality-owned building (covered by either Section 1301.1.1.6 or Section 1301.1.1.7 as applicable).

1301.1.1.3 Educational Group E. A *project* of Educational Group E occupancy owned, operated or maintained by the D.C. Public Schools (DCPS), or a public charter school, shall be designed and constructed to meet the LEED standard for Schools, at the Gold level or higher. The applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

Exceptions:

1. Where sufficient funding is not available to meet the applicable LEED standard for Schools at the Gold level, then the *project* shall meet the LEED standard for Schools at no less than the Certified Level of LEED standard for Schools. For the purpose of determining the applicability of this exception, "sufficient funding" shall mean the lack of committed

public funds in an approved District budget to fund the LEED standard for Schools at the Gold level.

2. Where a *project* for Educational Group E occupancy is located in only a portion of a building, then only that portion of the building that is the subject of the *project* shall comply with this Section 1301.1.1.3.

1301.1.1.4 Project containing Residential Group R occupancies. Where a *project* contains 10,000 square feet (929 m²) or more of *gross floor area* for Residential Group R occupancies, including the allocable area of common space, then the residential occupancies of the *project* shall be designed and constructed to meet or exceed the Enterprise Green Communities standard, or a substantially equivalent standard as determined by the *code official*. This self-certification checklist shall be submitted to the *code official* with the application for the certificate of occupancy of the residential component of the *project*. The residential component of the *project* shall not be required to meet a LEED standard.

1301.1.1.5 Interior construction of a mixed use space in a Residential Group R project. Where Residential Group R occupancies exceed 50 percent of the *gross floor area* of the *project*, including allocable area of common space, and the *project* contains at least 50,000 contiguous square feet (4645 m²) of *gross floor area*, exclusive of common space of the non-residential occupancies, then the space designated for non-residential occupancies shall be designed and constructed to meet or exceed one or more of the applicable LEED standards listed in Section 1301.1.3 at the Certified Level. The applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

1301.1.1.6 Interior tenant fit-out alteration in a District-Owned or a District Instrumentality-Owned Project. Where a *project* in a District-owned or a District instrumentality-owned building involves the alteration of 30,000 square feet (2787 m²) or more of *gross floor area* for a single non-residential occupancy, exclusive of common space, for which space a certificate of occupancy for non-residential use has been or would be issued, and the scope of work is equivalent to Level 3 *alterations* as defined in the *Existing Building Code*, then the portion of the *project* subject to alteration shall be designed and constructed to meet or exceed one or more of the LEED standards listed in Section 1301.1.3 at the Certified Level. The applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

1301.1.1.7 Interior tenant fit-out in new construction. Where a *project* in a District-owned or a District-instrumentality-owned building involves the fit-out for tenant occupancy of shell space or spaces of 30,000 square feet (2787 m²) or more of *gross floor area* for a single non-residential occupancy, exclusive of

common space, for which space a certificate of occupancy would be issued, the portion of the *project* subject to tenant fit-out shall be designed and constructed to meet or exceed one or more of the applicable LEED standards listed in Section 1301.1.3 at the Certified Level. The applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

1301.1.2 Privately-owned projects. This section shall apply to a *project* that is privately-owned and is either new construction or an alteration where the scope of work is equivalent to Level 3 *alterations* as defined in the *Existing Building Code*. This category includes a *project* involving improved and unimproved real property acquired by sale from the District or a District instrumentality to a private entity, unimproved real property leased from the District or a District instrumentality to a private entity, and any *project* where less than 15 percent of the *project's* total *project* cost is *District financed* or *District instrumentality financed*.

1301.1.2.1 Energy Star Target Finder Tool. Each *project* of 50,000 square feet (4645 m²) or more of *gross floor area* shall estimate the *project's* energy performance using the Energy Star Target Finder Tool and submit this data to the *code official* with the permit application.

Exception: Building occupancies for which the Energy Star tool is not available.

1301.1.2.2 Privately-owned non-residential projects. In addition to compliance with Section 1301.1.2.1, each non-residential *project* of 50,000 square feet (4645 m²) or more of *gross floor area* shall be designed and constructed to meet or exceed one or more of the LEED standards listed in Section 1301.1.3 at the Certified Level. A “non-residential *project*” shall mean a *project* where 50 percent or more of the *gross floor area*, including allocable area of common space, is occupied or intended for occupancy for uses that are not Residential Group R occupancies. The applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

1301.1.2.3 Interior construction of mixed use space in a Residential Group R project. Where Residential Group R occupancies exceed 50 percent of the *gross floor area* of the *project*, including allocable area of common space, and the *project* contains at least 50,000 contiguous square feet (4645 m²) of *gross floor area*, exclusive of common space of the non-residential occupancies, then the space designated for non-residential occupancies shall be designed and constructed to meet or exceed one or more of the applicable LEED standards listed in Section 1301.1.3 at the Certified Level. The applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

1301.1.3 LEED standards. Applicants, in consultation with the U.S. Green Building Council (USGBC) listed in Chapter 35, shall utilize one or more of the following LEED standards as appropriate for the type of *project* or occupancy:

1. New Construction & Major Renovations
2. Commercial Interiors
3. Core & Shell
4. Healthcare
5. Retail: Commercial Interiors
6. Retail: New Construction & Major Renovations
7. Schools

1301.1.3.1 LEED version. An applicant for permits subject to Sections 1301.1.1.2 through 1301.1.1.7 or Sections 1301.1.2.2 through 1301.1.2.3 shall register the *project* with the USGBC or shall meet the LEED requirements without USGBC registration. If the applicant chooses to meet the LEED requirements without USGBC registration, the earliest version of the appropriate LEED standard that shall be used is the version with USGBC open registration in effect one year prior to whichever of the following interactions of the applicant with the District of Columbia came first:

1. The approval of a land disposition agreement;
2. The submission of an application to the Board of Zoning Adjustment for a variance or special exception relief;
3. The submission of an application to the Zoning Commission for a planned unit development or other approval requiring Zoning Commission action;
4. The submission of an application to the Historic Preservation Review Board or Mayor's Agent for the Historic Preservation Review Board;
5. The filing of a building permit application for the primary scope of work of the *project*, which shall not include applications for raze, sheeting and shoring, foundation or specialty, miscellaneous or supplemental permits; or
6. Other substantial land-use interactions with the District as

determined by the *code official*.

1301.1.4 Verification. Evidence that a *project* meets or exceeds the LEED standard required by Sections 1301.1.1.2 through 1301.1.1.7 or Sections 1301.1.2.2 through 1301.1.2.3 shall be submitted to the *code official* within 24 calendar months after the *project's* receipt of the first certificate of occupancy issued for occupiable space in a *story above grade plane*.

1301.1.4.1 Evidence required. For purposes of this section, verification of compliance shall be established by the following:

1. A certification by the USGBC that the *project* meets or exceeds the applicable LEED standard required by Sections 1301.1.1.2 through 1301.1.1.7 or Sections 1301.1.2.2 through 1301.1.2.3; or
2. A determination by the *code official* that the *project* meets or exceeds the LEED standard required by Sections 1301.1.1.2 through 1301.1.1.7 or Sections 1301.1.2.2 through 1301.1.2.3; or
3. A certification by an *approved agency* or *approved source* that the *project* meets or exceeds the LEED standard required by Sections 1301.1.1.2 through 1301.1.1.7 or Sections 1301.1.2.2 through 1301.1.2.3.

1301.1.4.2 Extension. The *code official*, for good cause and upon written request, is authorized to extend the period for verification of compliance for up to three consecutive one year periods.

1301.1.5 Financial security. Before issuance of the first certificate of occupancy for occupiable space in a *story above grade plane* of a privately-owned *project* subject to the provisions of Sections 1301.1.2.2 through 1301.1.2.3, the applicant shall provide to the *code official* evidence of financial security to cover the amount of fine that would be imposed under the Green Building Act for non-compliance with the provisions of Sections 1301.1.2.2 through 1301.1.2.3.

1301.1.5.1 Amount of financial security. The amount of the potential fine on a *project*, and thus the amount of financial security, shall be as follows:

1. \$7.50 per square foot of *gross floor area* of construction if the *project* is less than 100,000 square feet (9290 m²) of *gross floor area* of the *project*.
2. \$10.00 per square foot of *gross floor area* of construction if the *project* is equal to or greater than 100,000 square feet (9290 m²) of *gross floor area* of the *project*.

The amount of a fine for non-compliance under this sub-section, and thus the amount of security, shall not exceed \$3,000,000. When applying the provisions of this Section 1301.1.5 to interior construction of a mixed use space in a Residential Group R *project* covered by Section 1301.1.2.3, the *gross floor area* of the *project* shall be deemed to mean the contiguous *gross floor area*, exclusive of common space, of the non-residential occupancies. The amount of this fine shall be subject to modification based upon the form of security for performance as provided for in Sections 1301.1.5.2.1 through 1301.1.5.2.3.

1301.1.5.2 Security for performance/form of delivery. The financial security requirement shall be met through one of the following four methods.

1301.1.5.2.1 Cash. If this option is elected, cash shall be deposited in an escrow account in a financial institution in the District in the names of the applicant and the District. A copy of a binding escrow agreement of the financial institution shall be submitted to the *code official* in a form satisfactory to the Office of the Attorney General, which provides that the funds can be released upon direction of the District where remitted pursuant to Section 1301.1.6. If cash is used as the financial security, the amount of the financial security posted shall be discounted by 20 percent.

1301.1.5.2.2 Irrevocable letter of credit. If this option is elected, an irrevocable letter of credit benefitting the District shall be submitted to the *code official* in a form satisfactory to the Office of the Attorney General from a financial institution authorized to do business in the District. The irrevocable letter of credit, issued by the financial institution, shall comply with applicable regulatory requirements. If an irrevocable letter of credit is used as the financial security, the amount of the financial security posted shall be discounted by 20 percent.

1301.1.5.2.3 Bond. If this option is elected, a bond benefitting the District, which complies with applicable regulatory requirements, shall be submitted to the *code official* in a form satisfactory to the Office of the Attorney General. If a bond is used as the financial security, the amount of the financial security posted shall be discounted by 20 percent.

1301.1.5.2.4 Binding pledge. If this option is elected, a binding pledge shall be submitted to the *code official* in a form approved by the Office of the Attorney General. The binding pledge shall be recorded as a covenant in the land records of the District against legal title to the land in which the *project* is located and shall bind the *owner* and any successors in title to pay any fines levied under Section 1301.1.6.1.

1301.1.6 Enforcement. Where a *project* fails to provide pursuant to Section 1301.1.4 satisfactory verification of the *project's* compliance with the requirements of Sections 1301.1.2.2 through 1301.1.2.3 within the prescribed time frame and any extensions

thereof granted by the *code official* pursuant to Section 1301.1.4.2, the *code official* is authorized to draw down on the financial security submitted as cash, irrevocable letter of credit or bond, by submission by the District of the original security documentation, provided that where a binding pledge has been provided, to enforce such pledge agreement pursuant to its terms. The amounts thus drawn down from the financial security shall be deposited in the Green Building Fund set up under the Green Building Act.

1301.1.6.1 Financial security drawdowns. If a *project* fails to provide satisfactory verification of compliance, the drawdowns of the financial security in the form of cash, irrevocable letter of credit, or bond shall be as follows:

1. Failure to provide proof of compliance within 24 calendar months after the *project's* receipt of the first certificate of occupancy for occupiable space in a *story above grade plane*: 100 percent drawdown; or
2. Miss up to three LEED points in the applicable LEED standard: 50 percent drawdown; or
3. Miss more than three LEED points in the applicable LEED standard: 100 percent drawdown.

1301.1.6.2 Binding pledge fines. If a *project* fails to provide satisfactory verification of compliance within 24 calendar months after the *project's* receipt of the first certificate of occupancy for occupiable space in a *story above grade plane* and a binding pledge is used as the form of financial security, one or more fines shall be due and payable per the amounts set out in 1301.1.5.1 as may be modified pursuant to Section 1301.1.6.1.

1301.1.7 Release of financial security. If, within 24 calendar months following the issuance of the first certificate of occupancy for occupiable space in a *story above grade plane*, the *project* fulfills the requirements of Section 1301.1.4, the financial security shall be released by the District of Columbia and, as applicable, returned.

1301.1.8 Remediation. If within 24 months after receipt of the first certificate of occupancy for occupiable space in a *story above grade plane*, or within the extension periods granted to the *project* per Section 1301.1.4.2, the *project* does not meet the requirements of Section 1301.1.4, the *project owner* shall, at its own cost, design and renovate the *project* to meet or exceed the current edition of the LEED standard for Existing Buildings: Operations & Maintenance at the Certified Level. The *project owner* shall submit sufficient data to the *code official* to verify compliance with this section. The *project owner* shall provide to the *code official* certification, by the *owner's registered design professional* or an *approved agency or an approved source* that the *project* complies with this section.

1301.1.9 Additional fine. If within 48 calendar months after receipt of the first certificate of occupancy for occupiable space in a *story above grade plane*, a *project*, subject to Section 1301.1.3 fails to provide satisfactory verification in accordance with the provisions of Section 1301.1.4 or Section 1301.1.8, the *project owner* shall pay a monthly fine of \$0.02 per square foot of *gross floor area* of the *project* to the District of Columbia. The fine shall be a civil penalty, due and payable annually. The fine shall be in addition to any fines issued under Section 1301.1.6 and shall not be subject to the \$3,000,000 limit under Section 1301.1.5.1.

1301.1.10 Appeals. Determinations made by the *code official* under Sections 1301.1.1 through 1301.1.9 may be appealed pursuant to Section 112 of the *Building Code*.

1301.1.11 Exemptions. A request for an exemption from application of the Green Building Act to any *project* may be made to DDOE pursuant to the provisions of Chapter 35 (Green Building Requirements) of DCMR Title 20 (Environment).

Chapter 35A (Referenced Standards) is amended as follows:

Insert a new referenced standard to read as follows:

Enterprise Community Partners, Inc. 10 G Street, NE, Suite 450 Washington, D.C. 20002		
Standard reference number	Title	Referenced in code section number
2011	Enterprise Green Communities On-Line Certification	1301.1.1.4

Insert a new referenced standard under subheading "US EPA" to read as follows:

US EPA Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, NW Washington, D.C. 20460		
Standard reference number	Title	Referenced in code section number
ENERGY STAR	Energy Star Target Finder Tool	1301.1.2.1

Strike the subheading "USGBC" in its entirety and insert a new subheading "USGBC" in its place to read as follows:

USGBC

U.S. Green Building Council
2101 L Street, NW, Suite 500
Washington, D.C. 20037

Standard reference number	Title	Referenced in code section number
LEED-NC 2009	New Construction & Major Renovations	1301.1.3
LEED-CI 2009	Commercial Interiors	1301.1.3
LEED-CS 2009	Core & Shell	1301.1.3
LEED 2009	Healthcare	1301.1.3
LEED 2009	Retail: Commercial Interiors	1301.1.3
LEED 2009	Retail: New Construction & Major Renovations	1301.1.3
LEED 2009	Schools	1301.1.3
LEED-EB 2009	Existing Buildings: Operations & Maintenance	1301.1.8

All persons desiring to comment on these proposed regulations should submit comments in writing to Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5164, Washington, D.C. 20024, or via e-mail at helder.gil@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at <http://dcra.dc.gov> by going to the "About DCRA" tab, clicking on "News Room", and then clicking on "Rulemaking".